

STANDARD AGREEMENT

STD. 213 (NEW 02/98)

AGREEMENT NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

CONTRACTOR'S NAME

2. The term of this Agreement is:

3. The maximum amount \$ of this Agreement is:

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work	Page(s)	
Exhibit B – Budget Detail and Payment	Page(s)	
* Exhibit C – General Terms and Conditions	GTC201 (Number)	02-20-01 (Dated)
Exhibit D – Special Terms and Conditions	Page(s)	
Exhibit E – Additional Provisions	Page(s)	
Exhibit F - Contact Persons	1	Page

*View at www.dgs.ca.gov/contracts, item GTC-201

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CALIFORNIA
Department of General
Services
Use Only

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED)



PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

BY (Authorized Signature)

DATE SIGNED



PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

☐ Exempt per _____

EXHIBIT A
SCOPE OF WORK

EXHIBIT B

Budget Detail and Payment Provision

The following clauses may or may not be included, Contract Officer (CO) to decide when developing this Exhibit for each agreement.

1. **INVOICING PROCEDURES:** For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.

Invoices shall include the Agreement Number and shall be submitted in duplicate not more frequently than monthly in arrears to: *(CO confirm)*

California Energy Commission
Accounting Office, MS-2
1516 9th Street, First Floor
Sacramento, California 95814

2. **BUDGET CONTINGENCY CLAUSE:** It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds as identified in Exhibit A, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

3. **TRAVEL AND PER DIEM RATES:** Contractor shall be reimbursed for travel and per diem expenses using the same rates provided to nonrepresented state employees. Contractor may obtain current rates from the Commission Contract Officer. Travel expenses in excess of the state rates cannot be reimbursed.
4. **RETENTION:** The State shall retain from each invoice an amount equal to 10% of that invoice. The retained amount shall be held by the Commission and released to Contractor only upon the Commission's approval that the Contractor has satisfactorily completed all of the required services and the Final Report (if required) has been received and accepted.

If a contract consists of the performance of separate and distinct tasks, then any funds withheld for a particular task may be paid upon completion of that task.

Contractor shall invoice the State for retention withheld by the Commission.

(CO confirm, if no retention is to be held, state so in this clause, also, identify what task(s) retention can be released when the task is complete.)

5. **PAYMENT TERMS:** *(CO Choose)*

- ☐ *Monthly Flat Rate* ☐ *Quarterly Flat Rate* ☐ *One –Time Payment*
☐ *Itemized Monthly or Quarterly Invoice*
☐ *Advance Payment Not to Exceed \$_____ or _____% of Contract Amount*
☐ *Reimbursement/Revenue*
☐ *Other (Explain) (i.e. lump sum/deliverable)*

6. **CONDITIONS:**

- A. No payment shall be made in advance of services rendered. (*CO confirm*)
- B. A request for payment must include an invoice with cost backup, such as, travel receipts (where appropriate) receipts for equipment or supplies, copies of subcontractor's invoice, deliverables as required by the Agreement, and written progress reports.
- C. Invoices shall identify charges by tasks, personnel, labor rates and hours, and expenses authorized by either this Agreement or subsequent Work Authorizations. (*CO confirm*)
- D. Payments shall be made to Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered and for which additional evidence is not required to determine its validity. Contractor will be notified via a Dispute Notification Form, within 15 working days of receipt of an invoice, if the State disputes the submitted invoice.
- E. Payment will be made in accordance with, and within the time specified, in Government Code Chapter 4.5, commencing with Section 927.
- F. Final invoice must be received by the Commission no later than 60 calendar days after the Agreement termination date.
- G. The State will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes, and no payment will be made for any taxes levied on employee's wages.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

PLEASE NOTE: This page will not be included with the final agreement. The General Terms and Conditions will be included in the Agreement by reference to internet site: www.dgs.ca.gov/contracts, item GTC-201, Standard Language for use in Standard Agreements. The exact terms to be used will be those appearing on the website the date the Agreement is signed by Contractor.

EXHIBIT D

Special Terms and Conditions

1. CONTRACT MANAGEMENT:

- A. Contractor may change Project Manager but the Commission reserves the right to approve any substitution of the Project Manager.
- B. The Commission may change the Contract Manager by notice given Contractor at any time signed by the Contract Officer.
- C. Commission staff will be permitted to work side by side with Contractor's staff to the extent and under conditions that may be directed by the Commission Contract Manager. In this connection, Commission staff will be given access to all data, working papers, etc., which Contractor may seek to utilize.
- D. Contractor will not be permitted to utilize Commission personnel for the performance of services, which are the responsibility of Contractor unless the Commission Contract Manager previously agrees to such utilization in writing, and an appropriate adjustment in price is made. No charge will be made to Contractor for the services of Commission employees while performing, coordinating or monitoring functions.

2. STANDARD OF PERFORMANCE: Contractor shall be responsible in the performance of Contractor's/subcontractor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by Commission Contract Manager or its designee, shall be borne in total by the Contractor/subcontractor and not the Commission. In the event the Contractor/subcontractor fails to perform in accordance with the above standard the following will apply: Nothing contained in this section is intended to limit any of the rights or remedies which the Commission may have under law.

- A. Contractor/subcontractor will reperform, at its own expense, any task, which was not performed to the reasonable satisfaction of the Commission Contract Manager. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Commission.
- B. The Commission shall provide a new schedule for the reperformance of any task pursuant to this paragraph in the event that reperformance of a task within the original time limitations is not feasible.
- C. If the Commission directs the Contractor not to reperform a task; the Commission Contract Manager and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Commission's right to reimbursement.

3. SUBCONTRACTS: Contractor shall enter into subcontracts with the following firms and/or individuals and shall manage the performance of the subcontractors.

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- B. Contractor shall be responsible for establishing and maintaining contractual agreements with, and the reimbursement of each of, the subcontractors for work performed in accordance with the terms of this Agreement. Contractor shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement; coordinating subcontractor accessibility to Commission staff, and submitting completed products to the Commission Contract Manager.
- C. All subcontracts shall contain the following: 1) the audit rights and non-discrimination provision stated in the General Terms and Conditions (Exhibit C); 2) further assignments shall not be made to any third or subsequent tier subcontractor without additional written consent of the Commission Contract Manager; and the confidentiality provisions in the Reports paragraph of this Agreement.
- D. Additions, Removal or Substitutions of Subcontractors

The Commission reserves the right to replace a subcontractor, request additional subcontractors, and approve additional subcontractors requested by the Contractor. Such changes shall be subject to the following conditions:

- 1) If the Commission or Contractor requires the replacement or addition of subcontractor(s), the subcontractor(s) shall be selected using 1). The competitive bid process and Contractor shall obtain a minimum of three bids. Awards shall be made to the lowest bidders meeting the requirements of the competitive bid. The competitive bid process shall be conducted in conformance with the State's and the Commission's procedures for competitive bids and shall be subject to the approval of the Commission Contract Manager and Commission Contracts Officer prior to release of the bid document. 2). The Commission may direct Contractor to sole source a subcontract with a specific firm, once Commission has obtained sole source approval via internal procedures. The Contractor or the Commission Contract Manager shall provide justification for the sole source subcontract to the Contracts Officer.
- 2) The Commission Contract manager shall complete and submit to the Commission Contract Officer a "Subcontractor Add" memo. This memo identifies the new subcontractor and what bidding method was used to obtain subcontractors (competitive or sole source).
- 3) Contractor shall submit any proposed subcontracts not originally identified in Contractor's proposal, or any substitution of subcontracts to the Commission for its approval prior to Contractor entering into it. Upon the termination of any subcontract, the Commission Contract Manager shall be notified immediately.

5. **REPORTS:**

- A. **Progress and Final Reports:** Contractor shall prepare progress reports summarizing all activities conducted by Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, Contractor shall prepared a comprehensive Final Report, on a schedule as provided in Exhibit A.

- B. **Title:** Contractor's name shall only appear on the cover and title page of reports as follows:
- California Energy Commission
Project Title
Contractor Number
By (Contractor)

- C. **Ownership:** Each report shall become the property of the Commission.

- D. **Non-Disclosure:** Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the Commission Contract Manager, except as provided in F, below. Permission to disclose information on one occasion or public hearings held by the Commission relating to the same shall not authorize Contractor to further disclose and disseminate the information on any other occasion. Contractor will not comment publicly to the press or any other media regarding its report, or Commission's actions on the same, except to Commission staff, Contractor's own personnel involved in the performance of this Contract, or at public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Commission or any other party, based on information received from the Commission as to the role of Contractor or the content of any preliminary or final report, Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.

- E. **Confidentiality**

No record which has been designated as confidential, or is the subject of a pending application of confidentiality, shall be disclosed by the Contractor, Contractor's employees or any tier of subcontractors, except as provided in 20 California Code of Regulations, Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 California Code of Regulations, Sections 2501, et seq.). At the election of the Contract Manager, Contractor, Contractor's employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the Commission Contract Manager or Contract Officer.

Each subcontract shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.

- F. **Disclosure:** Ninety days after any document submitted by the contractor is deemed by the Contract Manager to be a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following legend:

"LEGAL NOTICE"

"This report was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the use of this information will not infringe upon privately owned rights."

6. **CONTRACT DATA, OWNERSHIP RIGHTS:**

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.
- B. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Commission and shall belong to the Commission.
- C. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Contract is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Commission access to, and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.
- D. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Contract. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Contract at the Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
- E. As to "generated data" which is reserved to Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at Contractor's own expense for a period of not less than three years after receipt by the Commission of the Final Report herein.
- F. Before the expiration of the three years, and before changing the form of or destroying any data, Contractor shall notify the Commission of any contemplated action and the Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Commission so elects, the expense of further preserving data shall be paid for by the Commission. Contractor agrees that the Commission may at its own expense, has reasonable access to data throughout the time during which data is preserved. Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

7. RIGHTS OF PARTIES IN COPYRIGHTS, PHYSICAL WORKS OF ART AND FINE ART

The Contractor, by signing this Contract, expressly grants to the Commission for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Contract a royalty-free, paid-up, non-exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art.

Contractor, by signing this Contract, expressly conveys to the Commission all ownership of the physical works of art and fine art produced under this Contract. Contractor agrees it does not reserve any rights to the physical works of art and fine art produced under this Contract.

Contractor shall obtain these same rights for the Commission from all subcontractors and others who produce copyrightable material, works of art, or works of fine art under this Contract. Contractor shall incorporate these paragraphs, modified appropriately, into its agreements with subcontractors. No subcontract shall be entered into without these rights being assured to the Commission from the subcontractor.

8. **PUBLIC HEARINGS:** If public hearings on the scope of work are held during the period of the Contract, Contractor will make available to testify the personnel assigned to this Agreement. The Commission will reimburse Contractor for compensation and travel of the personnel at the Contract rates for the testimony which the Commission requests.
9. **DISPUTES:** In the event of a Contract dispute or grievance between Contractor and the Commission, both parties shall follow the following two-step procedure. Contractor shall continue with the responsibilities under this contract during any dispute.

A. Commission Dispute Resolution

The Contractor shall first discuss the problem informally with the Commission Contract Manager. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the Commission Contracts Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Commission Contracts Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Contracts Officer shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the Contracts Officer decision, the Contractor may appeal to the second level.

The Contractor must prepare a letter indicating why the Contracts Officer's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the Contracts Officer's response. This letter shall be sent to the Commission's Executive Director within ten (10) working days from receipt of the Contracts Officer's decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. The Executive Director may inform the Commission of the decision at a Commission business meeting. Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Commission at a regularly scheduled business meeting. Contractor will be provided with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

B. Binding Arbitration

Should the Commission's Dispute Resolution procedure above fail to resolve a contract dispute or grievance to the satisfaction of the Contractor, the Contractor and Commission mutually may elect to have the dispute or grievance resolved through binding arbitration. If one party does not agree, the matter shall not be submitted to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later than six (6) months after the date of the contract's termination, despite when the dispute or grievance arose, and despite the applicable statute of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the parties agree that the sole forum to resolve a dispute is state court.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Contract funds. Both parties must agree, in writing, to utilize contract funds to pay for arbitration costs.

10. **TERMINATION:**

The parties agree that because the Commission is a state entity and contracts on behalf of all Californian rate payers, it is necessary for the Commission to be able to terminate, at once, upon the default of Contractors and to proceed with the work required under the Agreement in any manner the Commission deems proper. Contractor specifically acknowledges that the unilateral termination of the Agreement by the Commission under the terms set forth below is an essential term of the Agreement, without which the Commission would not enter into the Agreement. Contractor further agrees that upon any of the events triggering the unilateral termination the Agreement by the Commission, the Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Commission.

This Agreement may be terminated for any reason set forth below.

A. With Cause

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, Commission shall pay Contractor only the reasonable value of the services theretofore rendered by Contractor, as may be agreed upon by the parties or determined by a court of law, but not in excess of the contract maximum payable. "Cause" includes without limitation:

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or
- 2) Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts his ability to perform under this Agreement; or
- 3) It is determined after notice and hearing by the Commission or the Executive Director that gratuities were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of the Agreement; or
- 4) Significant change in Commission policy such that the work or product being funded would not be supported by the Commission; or
- 5) Reorganization to a business entity unsatisfactory to the Commission; or
- 6) The retention or hiring of subcontractors, or the replacement or addition of personnel that fail to perform to the standards and requirements of this Agreement.

B. Without Cause

The Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate the Contractor's expenses and obligations hereunder. Also, in such event, the Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within 30 days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

11. **WAIVER:** No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Commission to enforce at any time any of the provisions of this Contract, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Contract or any part of it or the right of the Commission to thereafter enforce each and every such provision.
12. **CAPTIONS:** The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.
13. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE:** In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.
14. **NOTICE:** Notice to either party may be given using the following delivery methods, certified mail, Federal Express, United Parcel Service, or personal delivery, providing evidence of receipt, to the respective parties identified on page one of this Agreement. Delivery by fax or e-mail is not considered notice for the purpose of this Agreement.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed 24 hours, or whenever the next business day occurs.
15. **STOP WORK:** The Commission Contract Officer may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, misrepresentations and the like.

- A. **Compliance:** Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.

- B. **Equitable Adjustment:** An equitable adjustment shall be made by Commission based upon a written request by Contractor for an equitable adjustment. Such adjustment request must be made by Contractor within thirty (30) days from the date of receipt of the stop work notice.
- C. **Revoking a Stop Work Order:** Contractor shall resume the stopped work only upon receipt of written instructions from the Commission Contract Officer canceling the stop work order.

16. **INTERPRETATION OF TERMS**

Any inconsistency between the terms of any exhibits shall be resolved in favor of Exhibit A (Scope of Work) and Exhibit E (Additional Provisions).

EXHIBIT E

ADDITIONAL PROVISIONS

The following clauses may or may not be included, Contract Officer to decide when developing this Exhibit for each Agreement.

1. **CONFIDENTIALITY**: The Commission Contract Manager and the Contractor will identify pre-existing confidential or proprietary items to be delivered under this Agreement.

OR

The Contractor has not identified any confidential or proprietary items to be delivered under this Agreement.

OR

The Commission agrees to keep confidential the items listed below.

- AND** In the event there is a disagreement regarding confidential treatment of items to be delivered under the Agreement, the parties shall use the "Disputes" clause. Those items to be considered as confidential shall be subject to the Commission Executive Director's determination of confidentiality. If the Contractor wishes to appeal the Executive Director's determination, the appeal shall be made to the full Commission. If the Contractor disagrees with this determination, the Contractor may seek judicial review as per Title 20 CCR 2506, et seq.
- Public and Confidential Deliverables

All deliverables including, but not limited to, progress reports, task deliverables and the Final Report shall not contain confidential information except when the Commission Contract Manager and the Contractor deem it necessary to include confidential information in a deliverable. In such event, the Contractor shall prepare the deliverable in two separate volumes, one for public distribution and one to be maintained in the Commission's confidential records. Only those items specifically listed here or in a subsequent determination of confidentiality qualify as confidential deliverables.

A. Identifying and Submitting Confidential Information

All confidential information submitted by the Contractor shall be marked "Confidential" on each page of document containing the confidential information and presented in a sealed package to the Commission Contract Manager.

B. Future Confidential Information

The Contractor and the Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information that the Contractor considers to be protectable as confidential information. The Commission Contract Manager shall provide Contractor with a copy of the Commission's Application for Confidential Designation. Contractor must list all items and information along with justification for confidentiality and submit the application to the Commission Contract Manager. The Commission Executive Director makes the final determination of confidentiality. Such subsequent determinations will be added to this Exhibit.

2. **WORK AUTHORIZATION PROCESS**: The Commission Contract Manager shall prepare a Work Authorization.(WA) directing the work the Contractor provides. All WA shall be in writing, numbered sequentially and approved by the Contractor's Project Manager and Commission's Contract Manager before beginning work. The Commission Contract Manager shall file all signed WA with the Commission Contracts Office. Each WA shall detail the following:

1. Detailed scope of work and what task the WA falls within related to this Agreement, objective or goals, the technology area and identification of the Contract/subcontractor team.
 2. All significant materials to be developed or services delivered. Identification of any materials to be furnished by the Commission to the Contractor. The due dates for materials or services performed under the WA. The time period for entire WA.
 3. Estimated budget including person hours, hourly rates, travel expenses, and total cost of the WA.
- A. The Commission reserves the right to require the Contractor to stop or suspend work on any WA. The Commission Contract Manager shall provide in writing to the Contractor's Project Manager notice of the date work is halted or suspended. Costs incurred to that date shall be reimbursed in accordance with the termination paragraph.
- B. The actual costs of a completed WA shall not exceed the authorized amount, except under the following condition:
- If, in the performance of the work, the Contractor determines that the actual costs will exceed the estimated costs, Contractor shall immediately notify the Commission Contract Manager. Upon such notification, the Commission Contract Manager may:
- 1) Alter the scope of the WA to accomplish the work within the estimated costs; or
 - 2) Augment the dollar amount of the WA via an amendment; or
 - 3) Authorize the Contractor to complete the work for the actual costs; or
 - 4) Terminate the WA.
- C. Each WA shall be incorporated into this Agreement. However, it is understood and agreed by both parties that all of the terms and conditions of this Agreement shall remain in force with the inclusion of any such WA. A WA shall in no way constitute an independent contract, other than as provided pursuant to this Agreement, nor in any way amends or supersedes any of the other provisions of this Agreement.

3. **CONFLICT OF INTEREST:**

Contractor agrees to continuously review new and upcoming projects in which members of the Contractor team may be involved for potential conflicts of interest. Contractor shall report its findings in its progress report. Contractor shall submit a completed Fair Political Practices Commission Form 730, "Statement of Economic Interests" for each consultant directed by the Commission to file a statement.

4. **TIMING OF CONTRACT EXECUTION & PERFORMANCE**

This Agreement is funded by urgency legislation [Senate Bill 5, 2001/2002 Extraordinary Session] [Assembly Bill 29, 2001/2002 Extraordinary Session]. Pursuant to the legislation, all awards funded by this legislation must, to the maximum extent feasible, be prioritized based on immediate benefit in peak energy demand reduction and more efficient use of energy. If Contractor has not signed this Agreement within 5 working days after the date the final version of the Agreement is sent to Contractor for signature, the Commission may disencumber funds and award the funds to another project. After the contract has been signed by both parties and any necessary approvals obtained, Contractor shall notify the Commission Contract Manager if circumstances occur which will delay the project so that tasks cannot be completed within the timeframes specified in the Scope of Work. Contractor shall notify the Commission Contract Manager in writing immediately of the occurrence of the delay. If Contractor does not perform any task by the agreed-upon date in the Scope of Work, Commission may terminate this Agreement upon 5 days written notice.

5. **PROJECT COSTS [SB5X contracts only]**

Where appropriate, not less than 85 percent of the funds in this Agreement shall be budgeted for direct rebates, purchases, direct installations, buy-downs, loans or other incentives that will achieve reductions in peak electricity demand and improvement in energy efficiency.

6. **PROJECT EXTENSIONS**

Contractor must complete work by the dates indicated in the scope of work. The contractor has an obligation to let the contract manager know of any potential delays in deliverables as soon as they learn of any obstacles that might delay the project. The Contractor should show it neither knew nor had reason to know of the circumstances that led to the delay. If the Contractor does not meet the applicable deadlines, the award may be terminated and the funds reallocated. On the other hand, the Commission is committed to working with the contractor to quickly resolve or remove any factors leading to delays. If a project or portion of the scope of work is not completed by the agreed upon dates, due to extenuating circumstances, the Contractor may make a written request to extend the deadlines. The Commission's Energy Efficiency Committee may extend the dates at its discretion. An extension may be granted by the Committee if the following conditions exist:

- The Contractor documents that circumstances beyond its control (such as decisions by other regulatory bodies or significant changes in market conditions) prevent the work from being completed by the applicable deadlines.
- The Contractor must show it has taken all possible actions to mitigate the delay and is committed to make every effort and apply resources to meet the new deadline.
- The requested extension would otherwise comply with the program legislation and the terms of this Agreement.

7. **PROGRAM EVALUATION, PROJECT MONITORING AND VERIFICATION**

Contractors will cooperate with the evaluation efforts of the Commission and its monitoring, verification, and evaluation (MV&E) contractor. Contractors will provide access to facilities where demand-reducing measures have been installed and/or implemented and provide associated records. If the contractor/grantee is not the final recipient of demand reducing equipment, the contractor/grantee is responsible to ensure the ultimate recipient fulfills this obligation. Evaluation activities may occur from the time that the agreements are executed until January 1, 2005. The Commission or the MV&E contractor may inspect the sites prior to installation of measures to establish baselines and may inspect the sites after installation to verify installations. The Commission or the MV&E contractor may install monitoring equipment at any time during the duration of the contract.

Contractors are responsible for providing lists of customers, project sites and incentives to the Commission and the MV&E contractor. In addition, contractor and/or contractor's customers must provide all information necessary for an independent MV&E reviewer to reproduce the estimated demand reduction. While a complete list of the data necessary to evaluate the programs cannot be included here, the general data requirements and obligation of contractors/grantees are presented in the monitoring and verification protocols available on the Commission's web-site. Additional data requirements specific to the measurement of savings from each project may be added as a result of coordination between each project manager, the Commission and contractor.

8. **NOTIFICATION OF NONOPERATION**

Contractor shall notify Commission Contractor Manager in writing immediately if Contractor has reason to believe that the project or any project within a program may become non-operational during the term of this Agreement.

9. **ENFORCEMENT ACTION**

A. Recovery of Overpayment

The Commission's Energy Efficiency Committee, with the concurrence of the Commission, may direct the Commission's Office of Chief Counsel to commence formal legal action against any Contractor or former Contractor to recover any portion of a Contract award the Committee determines the Contractor or former Contractor was not otherwise entitled to receive.

B. Fraud and Misrepresentation

The Committee may initiate an investigation of any Contractor which the Committee has reason to believe may have misstated, falsified, or misrepresented information in applying for a Contract, invoicing for a Contract payment, or in reporting any information as required by the Overall Program Guidelines or applicable Program Element Guideline. Based on the results of the investigation, the Committee may take any action it deems appropriate, including, but not limited to, termination of the Contract, recovery of any overpayment, and with the concurrence of the Commission, recommending the initiation of an Attorney General investigation and prosecution pursuant to Government Code sections 12650, et seq., or other provisions of law.

10. **PEAK PERIOD DEFINITION**

Peak electricity demand savings are calculated as the average hourly reduction in high demand during a summer afternoon when California system electrical demand is very high. The peak demand period is defined as the hours of 2:00 pm to 6:00 pm on non-holiday weekdays during the months of June through September. This four hour average value will be used as a proxy for demand savings during individual hours of Independent System Operators Alerts and/or high system demand.

11. **EQUIPMENT**

Pursuant to SB5X or AB29X, and Exhibit A Scope of Work, the Commission shall fund _____ (name equipment). Ownership of identified equipment resides with Contractor or Contractor's customers since the equipment has no useful life at end of this Agreement and/or the equipment is a fixture. Contractor or Contractor's customers shall assume all risk for maintenance, repair, destruction and damage to equipment while in the possession or subject to the control of Contractor or Contractor's customers.

EXHIBIT F

NAMES AND ADDRESSES OF AGREEMENT REPRESENTATIVES

Commission Contract Manager: <div style="text-align: right; margin-right: 20px;">, MS-</div> California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: Fax: e-mail: <u> @energy.state.ca.us</u>	Contractor Project Manager: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Commission Contract Officer: <div style="text-align: right; margin-right: 20px;">, MS-18</div> California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: Fax: e-mail: <u> @energy.state.ca.us</u> Deliver confidential deliverables to this location only.	Contractor Contract Officer: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Invoices, Progress Reports and Non-Confidential Deliverables to: Accounting Office, MS-2 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: Fax: e-mail: <u> @energy.state.ca.us</u>	<u>(PIER only) Contractor</u> Key Personnel: (Name & phone) Key Subcontractors: (Name & phone) Key Partner: (Name & phone)
Legal Notices: Contracts Office, MS-18 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: Fax: e-mail: <u> @energy.state.ca.us</u>	(contractor legal person)